

In the Matter of License No. 171006 and all other Licenses
Issued to: JOHN FARACLAS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1073

JOHN FARACLAS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By an undated, amended decision, an Examiner of the United States Coast Guard at Portland, Oregon, suspended Appellant's licenses upon finding him guilty of negligence and inattention to duty. The single specification under the charge of negligence alleges that while serving as Master on board the United States SS SEAGARDEN under authority of the license above described, on or about 14 April 1957, Appellant permitted the forward fall of the port life-boat to be used to support the accommodation ladder on the port side. The specification under the charge of inattention to duty alleges that, while serving as above, Appellant failed to enter in the ship's Official Logbook any reference to injuries received by two members of the crew.

At the hearing held on 17 May 1957, Appellant was given a full explanation of the nature of the proceedings and the possible results of the hearing. Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charges and specifications after the Examiner ruled on several motions made by counsel for Appellant.

The Investigating Officer made his opening statement and introduced in evidence the testimony of four witnesses as well as several documentary exhibits. After the Investigating Officer rested his case, counsel for Appellant made a motion to dismiss which by the Examiner except with respect to one specification and part of another specification, neither of which is mentioned above.

In defense, Appellant offered in evidence his own testimony and that of another Master as an expert witness who testified that it was a common custom for Liberty ships to use the boat falls to support accommodation ladders as was done in this case. Appellant also testified that this method of rigging a two-section accommodation ladder was the usual practice on Liberty ships. With respect to the injuries, Appellant stated that they were not

entered in the Official Logbook because they were minor in nature.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner rendered his original decision on 19 February 1958 - nine months after the completion of the open hearing. An order was entered suspending all licenses, issued to Appellant, for a period of six months. As a result of the fact that this decision found proved the complete and partial specifications previously dismissed by the Examiner during the hearing, he rendered an amended decision upon request by counsel for Appellant. The Examiner concluded that only the two specifications, as set forth above, had been proved. The order was amended to provide for an outright suspension of four months.

FINDINGS OF FACT

From 4 March to 13 May 1957, Appellant was serving as Master on board the United States SS SEAGARDEN and acting under authority of his License No. 171006 while the ship was on a foreign voyage.

On 29 March 1957, fireman Handcock was injured, by a fall on the engine room floor plates, to the extent that he was relieved of his regular duties from the date of the accident until 5 April 1957. This was recorded in the medical log but no entry was made of it in the ship's Official Logbook as required by 46 U.S.C. 201.

On 14 April 1957, the SEAGARDEN was at anchor in the harbor at Inchon, Korea. This ship is a Liberty-type vessel which formerly had two lifeboats on each side but now has only one boat on each side. The boats are located aft of the davits which had been used for the boats which are no longer on board. On this date, the port boat was secured against its inboard chocks by two outboard and two inboard gripes. (In order to avoid the necessity of lifting the boat to clear it from the chocks, there were no outboard chocks.) The after lifeboat fall was properly secured to the boat. The forward lifeboat fall had been detached from the boat and was used to support the after, lower section of the two-section accommodation ladder on the port side. The forward, upper section of the accommodation ladder was supported by a fall from the after davit of the forward pair of davits which had formerly been used for the other lifeboat. The accommodation ladder could only be rigged aft along the side of the ship. Hence, the angle from the forward davit to the ladder made it almost impossible to use falls from both forward davits to support the ladder. There was no other convenient means of supporting the lower section of the ladder than with a fall from the forward davit of the after pair of davits. It took about twenty minutes to shift the boat fall from the ladder to

the boat. If the ladder were otherwise supported, it would still be necessary to lower the after section from the horizontal position before the lifeboat would completely clear it when lowered to the water.

The starboard accommodation ladder was also over the side. The record does not disclose whether it was supported in the same manner as the port ladder. But there is testimony that it is a common custom on Liberty ships to use the forward lifeboat fall to assist in supporting two-section accommodation ladders.

At 0800 on 14 April 1957, the SEAGARDEN was preparing to get underway to shift her anchorage because the anchor was dragging slightly. There was a current of about five knots. The accommodation ladders were rigged in a horizontal position. At approximately 0815, a boatload of Korean workers capsized while approaching a ship up ahead of the SEAGARDEN. Since the current would carry the natives down along the port side of the SEAGARDEN, the word was passed for the crew to stand by their port lifeboat stations. Many of the 36-man crew were ashore on Sunday leave but the stations were manned expeditiously. The Appellant went from the bridge to the vicinity of the port lifeboat. The Second Mate was also present. There was considerable confusion on deck and no orders were given with respect to the intended launching of the boat for the purpose of rescuing the Koreans from the water. Someone released the gripes and the boat slid off the inboard chocks and landed on the deck due to the fact that the forward boat fall was secured to the accommodation ladder rather than to the boat. There was minor damage to the boat which was repaired by the Chief Engineer. Persons in motorboats reused some of the Koreans.

When the boat slid out of control, messman Releford's left hand and wrist were crushed sufficiently to cause excessive swelling. As a result of this injury, Releford was declared not fit for duty and relieved of his duties until the completion of the voyage a month later. This injury was recorded in the medical log but no reference was made to it in the ship's Official Logbook.

Appellant has been serving as a Master on United States merchant vessels since 1950. His prior sea duty was on foreign vessels. Appellant's prior record with the Coast consists of a six months' outright suspension plus a probationary suspension in 1953 for neglect of duty in the lifesaving equipment was in an unseaworthy condition at sea and for attempting to impede an officer in the performance of his duties. These offenses also occurred while Appellant was serving on the SEAGARDEN.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1. The Examiner erred in finding the negligence specification proved. Four well-qualified witnesses testified that it was common custom and reasonable prudent practice on Liberty ships to use the forward lifeboat fall to hold the after section of the accommodation ladder while at anchor in a harbor. There was no evidence to the contrary introduced.

2. Since there was no other method of supporting this section of the ladder, the regulation was not breached which requires lifeboats to be available only "insofar as reasonable and practicable" while the vessel is not being navigated.

3. The injuries to the two crew members were not reasonably required to be entered in the Official Logbook because they were minor in nature. This was a proper exercise of discretion by Appellant.

4. The suspension ordered is harsh and unreasonable under the circumstances. Appellant will suffer a monetary loss of \$4,000 to \$6,000 as a result of the four months' suspension. Congress has provided only a \$25 penalty for failure to make a required entry in the Official Logbook. For these reasons, it is urged that the ordered suspension should be revoked and the charges dismissed.

APPEARANCE: Wood, Matthiessen, Wood and Tatum of Portland, Oregon, by John G. Holden, Esquire, of Counsel.

OPINION

It is my opinion that the contentions raised on appeal do not have sufficient merit to justify the dismissal of either specification or any modification of the order of suspension imposed by the Examiner.

The lesser of the two offenses, from the point of view of shipboard safety, is that Appellant failed to make entries in the Official Logbook concerning the injuries suffered by Hancock and Releford. Title 46 U.S.C. 201, Fifth, requires entries, by the Master, in the Official Logbook of "every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment." Appellant contends that this statutory requirement was not intended to apply to such matters as headaches and the minor injuries involved here. But the testimony of the Third Mate and medical exhibits establish that both seamen were sufficiently injured to require that they be relieved of their

assigned duties on the ship - Hancock for a week and Releford for a month. Hence, it is evident that these injuries were not so insignificant as to justify their exclusion from the Official Logbook by Appellant, the Master, as a matter of discretion on his part. Failure of a Master to make appropriate entries in the Official Logbook concerning the swollen knee of a crew member has been held to be in violation of the statute. The ALPHA (D.C.Pa., 1942), 44 F.Supp. 809. The entries in the medical log do not satisfy the requirement of 46 U.S.C. 201.

Although 46 U.S.C. 203 provides for a \$25 penalty against a Master who fails to make a required entry in the Official Logbook, this does not preclude action being taken against Appellant's licenses in this administrative proceeding. Appellant's \$4,000 to \$6,000 loss of salary as a result of this four months' suspension should not be equated to the comparatively minor penalties possible under 46 U.S.C. 203 for the purpose of claiming that the suspension ordered is unreasonable. It is clear from the Examiner's decision that by far the greater portion of the suspension is based on the offense alleged in the other specification and Appellant's related prior record of neglecting to maintain lifesaving equipment in a seaworth condition.

It is noted as a matter of interest that injuries incapacitating seamen for a period in excess of 72 hours must be reported to the nearest Coast Guard marine inspection office. See 46 CFR 136.05-1e. There are no charges involving this regulation under consideration in this case.

The much more serious offense is that Appellant negligently permitted the forward lifeboat fall to be used to support the port accommodation ladder. Title 46 CFR 94.15-5(a) states:

"The lifeboats and life rafts shall be readily available in case of emergency, and shall be kept in good working order and available for immediate use at all times when the vessel is being navigated and, insofar as reasonable and practicable, while the vessel is not being navigated."

Appellant interprets this regulation to mean that the lifeboats must be available only "insofar as reasonable and practicable" while a ship is at anchor in a harbor. On the basis of this interpretation, Appellant contends that the testimony of four witnesses as to established practice on Liberty ships shows that this use of the forward lifeboat fall was reasonable prudent procedure, according to the standards of seamen, rather than negligent conduct; and that making the boat unavailable for lowering, for a period of about twenty minutes longer than usual

while shifting the boat fall to the boat, was "reasonable and practicable" for the further reason that there was no other means of supporting the accommodation ladder.

I accept Appellant's interpretation of the regulation; but I do not agree with his conclusion that a usual practice on Liberty ships definitely establishes the reasonableness of the practice and necessarily precludes proof of negligence when such a practice or custom is followed. As applied to this case, the test of negligence is whether Appellant permitted that to be done which a reasonably prudent Master would not have allowed under the same circumstances. All Masters are required, by the ordinary practice of good seamanship, to have their ships' lifesaving equipment ready for use, at all times, to the fullest extent that it is reasonable. The regulation quoted above is simply clear notice of the existing standard of care required, with respect to lifeboats, in order to avoid being guilty of negligence. It is a fundamental proposition of law that a custom or practice which is contrary to laws or regulations, or is not reasonable in itself, is not proper behavior and, therefore, may constitute negligence.

Although the considerable testimony that this method of rigging the accommodation ladder was the usual practice is persuasive to some extent, I do not think that it is sufficient to justify Appellant's conduct under the prevailing circumstances. The dangers to which the crew were exposed is indicated by the fact that there was a five-knot current where the ship was anchored and the anchor was dragging. The launching of the port lifeboat would be delayed approximately twenty minutes in attempting to rescue a person falling overboard. A good example of the variety of other emergencies for which the boat might be needed is the capsizing of the boatload of Koreans which occurred.

Another important factor to consider is whether there was any other method of supporting the ladder. Appellant claims on appeal, without qualification, that there was not. But it is noted that on objections by Appellant's counsel, which objections were improperly sustained by the Examiner, two witnesses were prevented from answering questions as to whether this "common practice" was still followed after the accident on 14 April took place. One witness was able to answer, "They changed the . . .," before he was interrupted by counsel's objection. It affirmatively appears that there were other means of rigging the ladder although such methods were not convenient. Appellant's expert witness mentioned two other methods which would have entailed only minor delays in launching the boat. Another method not mentioned in the record would be to rig two falls to the ladder from the after davit of the forward pair of davits. Only one fall was supported by this davit at the time in question. Judging from this aspect of the case, it

seems that the lifeboat was not available "insofar as reasonable and practicable."

In addition, the regulation (46 CFR 94.15-5(a)) was not intended to authorize any delay as to the availability of lifeboats when such was the result of using any of the boat or launching equipment for a purpose totally unrelated to the maintenance of lifesaving equipment in a ready condition. This was the situation here.

For these reasons, I conclude that Appellant did not act as a reasonably prudent Master would have under the prevailing circumstances regardless of whether the lifeboat on the starboard side was available for immediate use. Appellant failed to have the port lifeboat available for use "insofar as reasonable and practicable" by permitting the forward fall to be detached from the boat for another use while anchored in an exposed harbor. In view of Appellant's prior record of another offense involving lifesaving equipment, the order of four months' suspension is completely justified.

ORDER

The undated order of the Examiner at Portland, Oregon, is
AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of October, 1958.